

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4264 of 2018 (O&M)
Date of decision:16.07.2018.

Rajesh Goyal

...Petitioner

Versus

Kartar Kaur

....Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kumar Vishav Aggarwal, Advocate for the petitioner.

LISA GILL, J.

Petitioner-tenant is aggrieved of his eviction from the demised premises by the learned Rent Controller vide order dated 13.07.2016 as well as the dismissal of his appeal by the learned Appellate Authority, Patiala, vide judgment dated 31.05.2018.

Facts necessary for the adjudication of the case are that the respondent-landlord filed a petition under Section 13 of the East Punjab Rent Restriction Act, 1949 (for short 'the Act') for eviction of the petitioner-tenant from the shop as detailed in the petition on the ground of non-payment of arrears of rent and further that the tenant had shifted his business from the rented premises to another shop in the locality which the tenant had purchased. The shop in question was lying locked for the last four months continuously. No business was being conducted therein, thus, the tenant had ceased to occupy the rented premises. It was prayed that petitioner-tenant should be ordered to be evicted.

Petition was resisted by the present petitioner while averring that the entire arrears of rent were paid. It was denied that the rented premises were lying locked for the last four months or that petitioner-tenant had ceased to occupy the shop in question or that he was demanding pagri from the respondent-landlord. However, it was admitted that the petitioner had purchased another shop in the same locality. It was prayed that petition filed by the respondent-landlord be dismissed.

From the pleadings of the parties, following issues were framed:-

- 1) Whether respondent is liable to be evicted on account of non-payment of rent? OPP
- 2) Whether respondent is liable to be evicted for not using the demised premises? OPP
- 3) Whether present petition is not maintainable? OPR
- 4) Relief.

Evidence was led by both the parties.

Learned Rent Controller, while considering the evidence on record, concluded that the tenant was proved to have ceased to occupy the shop in question for four months prior to the filing of the petition. It was further concluded that the tenant had failed to deposit the arrears of rent. Eviction of the petitioner was thus ordered and he was directed to handover vacant possession of the shop within two months from the date of passing of the order.

Appeal preferred by the petitioner was also dismissed by the Appellate Authority vide judgment dated 31.05.2018.

Aggrieved therefrom, present petition has been preferred.

Learned counsel for the petitioner vehemently argues that the learned Rent Controller, Patiala as well as Appellate Authority, Patiala have grossly erred in directing the eviction of the petitioner from the demised premises. It was contended that the landlord first filed a petition for eviction on 02.11.2011 only on the ground of arrears of rent not being paid by the petitioner as well as demand of pagri for vacating the demised premises. Amended petition was filed on 08.06.2012 wherein another ground was taken to the effect that the petitioner had ceased to occupy the shop in question for the last 4-5 months continuously.

It is vehemently argued that first and foremost, such an amendment should not have been permitted. Moreover, there is no evidence on record to indicate that the petitioner had ceased to occupy the said premises for four months continuously prior to the filing of the petition. Non-consumption of electricity by itself, it is submitted, cannot be a ground to hold that the petitioner had ceased to occupy the shop in question. It is thus prayed that this petition be allowed and the impugned judgments be set aside, consequently dismissing the respondent's petition.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

The petitioner admitted that he was a tenant in the shop in question though it was denied that he was in arrears of rent. It was further admitted that the petitioner had purchased the shop in the same locality, but he denied having shifted his business from the rented premises to the shop purchased by him. It was sought to be explained that the petitioner's younger brother was running the business in the shop purchased by him.

Learned trial Court specifically held that the petitioner failed to discharge the onus upon him regarding deposit of arrears of rent by mere filing of the documents i.e. a copy of letter along with demand draft (Ex.R1 and Ex.R4). Learned Appellate Authority has rightly held that the petitioner has failed to prove that the respondent-landlord received the draft in question or that she had received the rent as asserted by the petitioner. No serious argument in this respect has been raised by learned counsel for the petitioner.

In respect to the question whether the petitioner had ceased to occupy the premises in question, the landlord-respondent had placed on record photographs (Ex.P1 to P6) pertaining to the demised premises to show that the shop in question was lying closed.

I have perused the photographs of the demised premises furnished in Court by learned counsel for the petitioner. It is apparent that the shop in question was lying closed with a specific notice thereon that the shop in question i.e. 'Goel Paints and Hardware Store' has been shifted to the one adjacent/near the liquor vend. Learned counsel for the petitioner has made a futile attempt to suggest that the said notice had been put by the landlord-respondent herself while clicking the photographs. Such a stand was never taken by the petitioner before any of the learned Courts below. No such suggestion was even put to the witnesses. There is no evidence on record to substantiate such a plea. No reliance can be placed upon the photographs (Ex.R1 to R47) produced by the petitioner as they are admittedly subsequent to the filing of the petition.

Another argument urged on behalf of the petitioner is that non-consumption of electricity by itself does not reflect that the petitioner had ceased to occupy the premises in question. Reliance has been placed by learned counsel for the petitioner on the decision of this Court in Karam Chand Joshi Vs. Shri Kartar Singh and others, 1977 (1) RCR (Rent) 327, Faqir Chand (deceased) Vs. Faqir Singh and another, 1993 (1) PLR 159, Amar Nath Vs. Guru Ramdass Textile Mills, 2002 (1) RCR (Rent) 595 and Lt. Col. Baldev Arora Vs. D.C. Jain, 2013 (2) RCR (Rent) 332.

It is not in dispute that the documents tendered by the official from the Electricity Board before the trial Court indicate the consumption of electricity to be 'nil' during the period in question. Therefore, there is no dispute that no electricity was consumed by the tenant for the said period. Though there is no quarrel with the proposition that mere non-consumption of electricity by itself may not necessarily indicate the tenant ceasing to occupy the demises premises, the said decisions are not applicable in the peculiar facts of the present case as it is not this fact by itself that has led both the learned Courts below to return the findings that the petitioner had ceased to occupy the premises in question. It is on a wholesome appreciation of the evidence on record which includes not only the said electricity bills and the consumption of electricity for the property in question, but also the photographs, admission of the petitioner regarding purchase of another shop in the same vicinity by the petitioner and shifting of his business there that the findings have been returned by the learned Rent Controller which have been correctly upheld by the learned Appellate Authority.

It is also urged that during the pendency of the appeal preferred by the petitioner, respondent-landlord filed another petition for eviction on the

ground of bona-fide necessity, namely, to enable his son to carry on his business in the said shop and this reflects the falsity of the case put forth by the respondent-landlord. Moreover, the landlord's son, it is submitted has since passed away, therefore, the said ground is also not available to the landlord and the landlord's grandson is carrying on his business in the adjoining shop. The said argument is noticed only to be rejected for the reason that the same does have any bearing on the controversy in hand.

No other argument has been addressed.

Learned counsel for the petitioner is unable to point out any illegality, perversity or infirmity in the impugned judgments which may call for interference by this Court in exercise of its revisional jurisdiction.

Petition is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

July 16, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No